

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**COLLEGE PARK, INC., d/b/a
COLLEGE PARK NURSING AND
REHABILITATION CENTER¹**

Employer

and

Case No. 8-RC-16062

**SEIU, DISTRICT 1199 THE HEALTHCARE
AND SOCIAL SERVICES UNION, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name appears as stipulated at the hearing in Board Exhibit 2.

² The Petitioner's name is as reflected on the Petition.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service and maintenance employees as defined as qualified nursing assistants (QNAs), rehabilitation/transportation aides, housekeeping employees, laundry employees, dietary aides, cooks, maintenance employees, activity assistants employed at the Employer's Nursing Center facility located at 3201 Coshocton Road 16, Coshocton, Ohio excluding licensed practical nurses (LPNs), registered nurse supervisors, RN/Director of Nursing, RN/Director of Special Needs, RN/Director of Quality Assurance, the Activity Directors, business office managers, medical records coordinators, human relations staff development coordinators, dietary managers, maintenance supervisors, unit manager, second shift unit managers, the nursing home administrator, Vice-President of Operation, and office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

There are approximately 50 employees in the unit found to be appropriate.

Two issues were presented at the hearing. The first relates to the composition of the bargaining unit. Petitioner requests that the unit consist of certain employees employed at a single facility located at 3201 Coshocton Road 16, Coshocton, Ohio. This facility is a licensed nursing home. The Employer requests that the bargaining unit include not only the nursing facility but also employees working at its various other facilities which include group homes for the mentally retarded, a residential care facility and home care facilities. The second issue involves the matter of whether to include one position, the rehabilitation/transportation aide, in the bargaining unit

I. THE FACTS

The Employer, College Park, Inc., d/b/a College Park Nursing and Rehabilitation Center ("College Park"), is an Ohio corporation engaged in the operation of health care facilities including a nursing home, intermediate care facilities for the mentally retarded, home health care, and a residential (assisted living) facility. The Employer's main office is located at the Rose Lawn³ Building, 21990 Orchard Street, West Lafayette, Ohio ("Rose Lawn") and its treatment facilities are located in West Lafayette and Coshocton, Ohio .

College Park Nursing Center ("Nursing Center") is the nursing home operated by the Employer where the employees whom the Petitioner seeks to represent are employed. Services for the mentally retarded are provided at one of five facilities owned by the Employer: Dewhurst Group Home ("Dewhurst"), Edgerton Group Home ("Edgerton"), Guilliams Home ("Guilliams"), Remington Square Home ("Remington"), and Byron Court⁴ ("Byron"). The residential care facility is known as Windsorwood Place⁵ ("Windsorwood"). Home Health care services originate out of College Park Home Care Center ("College Park Home") and College Park Home Care Plus ("College Park Plus").

None of the Employer's facilities are adjacent to the Nursing Center. In terms of location, Dewhurst, Edgerton and Rose Lawn are located about six miles away from the Nursing Center while Guilliams, Remington, Byron, Windsorwood, College Park Home and College Park Plus are located approximately 4 miles away.

³ This appears to be the correct spelling of this facility. The transcript spells the home as "Roselawn" but Employer's Exhibit 2 notes the spelling as "Rose Lawn".

⁴ This appears to be the correct spelling of this facility. At the hearing the facility was spelled "Biron". (Tr. 11). Employer's Exhibit 2 notes the spelling as "Byron".

⁵ This appears to be the correct spelling of this facility. The transcript spells the facility as "Windsor Woods Place". (Tr. 11). Employer's Exhibit 2 notes the spelling as "Windsorwood Place".

College Park was incorporated in 1978 and at that time operated two homes for the mentally retarded including Rose Lawn and Edgerton Manor. The Guilliams Family Home opened in 1981. Two years later, in 1983, the Nursing Center began operation. Dewhurst was constructed and opened in 1985. Windsorwoods offered its services beginning in February 1994 and two years later Remington Square and Byron were opened.

Robert J. Guilliams and his wife Renee Guilliams are owners of College Park. He holds the position of president and she serves as the executive director. Mrs. Guilliams is in charge of human relations for the company. Both individuals have their offices at the Employer's Rose Lawn facility.

The Nursing Center is licensed by the State of Ohio and certified by the federal government. Patients at the facility are provided with medical care as well as services related to the activities of daily living ("ADL").⁶ In addition, the Employer provides dietary, laundry, maintenance services as well as clerical and administrative support. The record establishes that the employees employed at this facility work in a very structured environment as compared to the Employer's other facilities.

Services for the mentally retarded are provided at one of the five group homes owned by the Employer. These facilities provide a variety of services to different levels of functioning mentally retarded clients. Activities of daily living are provided as well as habilitation, social service activities, housekeeping, laundry, dietary and support services. The number of employees who would be part of a bargaining unit, as requested by the Employer, in each of these facilities is as follows: Edgerton - 40 employees, Dewhurst - 45 employees, Guilliams Home - 4 employees, Remington - 6 to 8 employees, and Byron - 6 to 8 employees.

⁶ Activities of daily living are the basic fundamental building blocks of care including bathing, dressing, going to the toilet and eating. (Tr. 18).

Assisted living services permits clients to live in a less restrictive environment than a nursing home and is provided by the Employer at Windsorwood. The medical condition of these clients has not impaired their ability to function independently. Services provided for assisted living clients do not have a strong medical component and are more related to supported living, such as providing meals and other basic services. These individuals are capable of living in small apartments outside of a skilled medical facility. Approximately 25 employees working at Windsorwood would be part of the bargaining unit requested by the Employer.

The Employer also provides services to clients who remain in their homes. The clients to whom these services are provided are usually elderly individuals. These services, called home health services, are based at the Employer's College Park Home and its College Park Plus operation. Home care focuses on providing ADL services whereas "home care plus" has an additional component of providing medical services. There are about 30 employees from the home health care facilities who would be part of the bargaining unit requested by the Employer.

The Employer's management hierarchy is as follows. Mr. Guilliams has various administrative duties relating to accounting, maintenance and environmental factors. As the executive director, Mrs. Guilliams has responsibility over employee relations and oversees the hiring, discipline and attendance of employees. Mike Sleutz is the vice president of operations and has responsibilities for the Nursing Center as well as the other facilities. He oversees the administrator of the Nursing Center and the various other elements of service provided to residents and patients.

As for the Nursing Center itself, the responsibilities for the day to day operation reside in an administrator. Currently the position is held by Corey Moner. One of Moner's primary responsibilities is to make sure the services provided to the patients comply with state

regulations. The director of nursing, the dietary department, housekeeping and unit managers all report to Moner.

Unit managers report to the administrator regarding administrative matters and to the director of nursing for matters relating to medical and patient care functions. Aides and housekeepers report to the unit managers. Dietary employees report to the dietary department head.

Unit managers at the Nursing Center do not have responsibilities at any of the Employer's other facilities. The head of the dietary department at the Nursing Center has no responsibility over the other facilities but does meal planning in conjunction with a corporate dietitian who also works with the dietary departments at the other facilities.

As with the operation of the Nursing Center, the Employer has a management staff which oversees each of the other facilities that it operates.

The Employer hires for all facilities through the office of Mrs. Guilliams. The Employer uses the same employment forms for each job applicant. All of the applications are reviewed by Mrs. Guilliams. Pre-employment physicals are performed for all applicants by the same physicians group. The Employer's policy is to permit transfers between its facilities. All job vacancy postings, however, are not always posted at all facilities.⁷

The work environment at each of the Employer's facilities is somewhat different. Employees at the Nursing Center work in a very structured environment as this facility by law is heavily regulated. Other facilities such as assisted living, although regulated, are less structured. The work performed by the staff also varies, to some degree, between facilities. The basic work

⁷ Job vacancy postings are not posted at all facilities when the vacancy requires more qualifications than the employees at a particular facility have, particularly in the more skilled or professional positions. In this connection, employee Karen McAllister testified that she has never seen a job posting at the Nursing Center for job vacancies at other facilities.

of providing ADL to residents and patients is similar at all of the facilities but service provided to patients and residents beyond the basic service is different. At the Nursing Center, for example, aides are trained to do medical interventions while at the mentally retarded facilities they are trained to do habilitation and at the assisted living facility they become involved in social activities. Although rank and file employees can transfer between facilities it is clear that once placed in a facility they have little, if any, interaction with employees at other facilities and generally do not perform work at facilities other than the one to which they are assigned.⁸

The Employer has one policy manual for all of its facilities. It applies the same discipline, hiring practices, transfer, and absenteeism policies to the employees in all facilities. All are covered by the same policy relating to vacation, holiday pay, overtime pay and pension benefits.

With the exception of a few management staff, all employees are paid hourly. Payroll for all facilities is prepared from one computer. Employees use "swipe" cards to clock in and out at an electronic time clock at their facility and this information is forwarded to a central collection point at Rose Lawn several times a day. Employees are all paid on the same day through direct deposit.

II. ANALYSIS

It is well established that the Act requires only that a petitioner seek an appropriate unit, and not the most appropriate or comprehensive unit. See Morand Brothers Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1950); and Capital Bakers, 168 NLRB 904 (1967). In deciding the appropriate unit, the Board first considers the union's petition and

⁸ There are some exceptions such as maintenance employees who perform work at various facilities.

whether the unit sought is appropriate. **Overnite Transportation Company**, 322 NLRB 723 (1996). A petitioner's desire concerning the composition of the unit which it seeks to represent constitutes a relevant consideration. **Marks Oxygen Company of Alabama**, 147 NLRB 228 (1964).

The legislative history of the 1974 amendments to the Act indicates Congress' concern over the proliferation of bargaining units within the health care industry. See S. Rep. No. 93-766 at 5 (1974); H.R. Rep. No. 93-1051 at 6-7 (1974). Recognizing this concern, the Board invoked its rulemaking authority in 1989 to limit the number of appropriate bargaining units within acute care facilities. 29 CFR sec. 103.30, 284 NLRB 1596 (1989), **American Hospital Assn. v. NLRB**, 499 U.S. 606 (1991) (upholding validity of Final Rule). Facilities, however, that were primarily nursing homes and psychiatric or rehabilitation hospitals were specifically excluded. Appropriate units in all other health care facilities as defined in Section 2(14) of the Act, were to be determined by adjudication.

The Board in **Park Manor Care Center, Inc.**, 305 NLRB 872, 875 (1991) stated that with regard to nursing homes it would apply a community of interest test together with "background information gathered during rulemaking and prior precedent." It noted, for example, that bargaining units which were either too large or too small may be undesirable. In unit determinations the Board has traditionally looked to such factors as mutuality of interests in wages and hours, commonality of supervision, skills and functions, frequency of contact with other employees, lack of interchange and functional integration and area practice and patterns of bargaining. **Hebrew Rehabilitation Center for the Aged**, 230 NLRB 255 (1977).

As noted above, the Petitioner has requested that the bargaining unit consist of employees at only one of the Employer's facilities, i.e., the Nursing Center. These employees include

qualified nursing assistants (QNAs), housekeeping employees, laundry employees, dietary aides, cooks, maintenance employees and activity assistants. The Employer does not object to the inclusion of these particular positions in a bargaining unit but rather contends that the bargaining unit should encompass a multi-facility unit consisting of all of its facilities. I find that, based on the evidence, there is a community of interest among these positions and they constitute an appropriate bargaining unit.⁹ Accordingly, the issue that must then be resolved is whether the appropriate unit is to consist only of the employees at the Nursing Center or those at all of the Employer's facilities.

In **Manor Healthcare Corp.**, 285 NLRB 224 (1987), the Board addressed the appropriateness of a single-facility bargaining unit in the health care industry where the employer operates more than one facility. The Board reaffirmed that a single facility unit geographically separated from other facilities operated by the same employer in the health care industry is presumptively appropriate, even though a broader unit might also be appropriate. In determining whether an employer has sufficiently rebutted this presumption the Board continues to weigh traditional factors such as "geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision and bargaining history." **Staten Island University Hospital**, 308 NLRB 58, 61 (1992), *enfd.* 24 F. 3rd 450 (2d Cir. 1994). The Board has noted that the party opposing the single facility unit must show circumstances that militate against it. **Manor**, *supra*, at 226.

Under the criteria in **Manor**, *supra*, and **Staten Island**, *supra*, I find that the unit requested by Petitioner is presumptively appropriate and that the Employer has failed to meet its burden of overcoming the presumption in favor of a multi-facility unit.

⁹ There is an issue as to the inclusion of the position of rehabilitation/transportation aides into the unit. For the reasons explained later in this decision I shall include that classification in the unit.

The Employer has attempted to establish that College Park is a single integrated organization with common ownership, management and policies. Although overall control of College Park is vested in its two owners, the management and supervision of each of the Employer's facilities rests with separate administrators. Specifically, at the Nursing Center, Corey Moner, the administrator oversees day-to-day operations and has various department heads reporting to him. The employees at this location in turn report to these department heads. From the record it appears a similar management structure is in place at each of the Employer's other facilities.

There are some functions over which the Guilliams' exert direct control but these are limited. All payroll is processed through the central administrative office. It also appears that all employees are covered by the same employee manual, enjoy similar, if not identical benefits, and are subject to the same overall policies, including discipline. Mrs. Guilliams as the executive director has some responsibility over hiring and discipline at the facilities. Mr. Guilliams testified that his wife reviews every employment application that is submitted. There is evidence, however, that local supervisors are actively involved in the hiring and disciplinary process, as well. Employee Carrie Mowery testified that she applied for a position at the Nursing Center and was interviewed by a unit manager, Sarah Streeter, and subsequently by another manager, Ann Sullivan. She was then hired for a quality nursing assistant (QNA) position at the Nursing Center.

Deleesie Bartlett works in the Nursing Center as a nurse's aide. She testified that she has been disciplined by her unit manager, Christine Bell. Counseling was also provided by the unit manager. She indicated that to her knowledge Mrs. Guilliams has never overturned a disciplinary action. Donna Ireland, a dietary aide at the Nursing Center, testified that she reports

in the first instance to her direct supervisor. After that she takes her concerns to the Nursing Center administrator. Ireland reported one instance where she attempted to complain to Mrs. Guilliams about a problem with uniforms and never heard back from her.¹⁰ She was, however, called into the office administrator's office and admonished because she had gone over his head with the problem. Karen McAllister testified that she worked at the Nursing Center as a nurse's aide and reported to LPNs or the LPN supervisor. The next line of supervision was the facility administrator. She testified that during her eight year tenure at the Nursing Center she has never discussed any work related problems with Mrs. Guilliams.

It is clear from the testimony that, although the Guilliams' are the owners of College Park and oversee all of its facilities, day to day control is vested in the administrator of each of the facilities. In the case of the Nursing Center the administrator oversees the operation and has control over the actions of the employees at that facility.

In a further attempt to establish the integrated nature of College Park's operation, the Employer has provided some evidence that employees have transferred between facilities. It has submitted a list of 108 individuals who have transferred from one facility to another.¹¹ It appears from the list that it dates back to at least 1983. The list does not contain the titles or positions of the individuals listed. Some of the individuals are supervisors and others may not be employees who are to be part of any bargaining unit. On cross-examination, Mr. Guilliams conceded that the list does contain the names of supervisors. Although it is difficult to determine how many of the individuals on the list are supervisors or non-bargaining unit individuals, the names of Beau and Stacy Guilliams appear.¹² The permanent transfer of 108 individuals over the course of 17

¹⁰ Ireland wrote a "direct line" to Mrs. Guilliams. This is a procedure whereby employees can contact her directly without going through their supervisor.

¹¹ Employer Exhibit 1.

¹² Beau and Stacy Guilliams are the son and daughter in law of Robert and Renee Guilliams. (Tr. 142).

years in an operation that employs approximately 170 to 200 employees is insufficient to support the argument that the only appropriate unit herein is a multi-site unit.

In **Manor Healthcare Corp.**, *supra* at 227, one of the factors the Board considered when determining whether to establish a single facility bargaining unit was whether employees are used to assist at facilities other than the one to which they are assigned. With the limited exception of the maintenance employees who perform work at various facilities there is no evidence that employees assigned to one facility temporarily perform work at other of the Employer's facilities. The employees who testified all reported that they rarely, if ever, went to facilities other than the one at which they worked and never saw employees from other facilities working on temporary assignment or as fill-ins at their facility. It is clear from the evidence that, generally, employees assigned to work in one facility work at that facility and do not provide assistance nor are they temporarily assigned to work at other facilities.

The testimony of employee witnesses it also establishes there is little interaction between employees of different facilities. Ireland noted that she had been to facilities other than the Nursing Center where she worked only while on tours. She did not know any employees at the other facilities nor could she remember any instances where employees at the other facilities came to the Nursing Center to fill in. Similarly, McAllister testified that while she had worked at the Nursing Center for 8 years she had never been to another facility and knew only one person at another facility. She also noted that she never saw postings for jobs for the other facilities at the Nursing Center. Markley reported that she had never filled in for work at any of the other facilities.

The Employer attempts to establish that the rank and file employees at all of its facilities have similar duties and responsibilities, provide the same type of care to patients and residents

under their care and have similar skills. Relying on the fact that all individuals in the facilities received ADL services by the staff, the Employer attempts to minimize the differences between the Nursing Center and its other facilities. This position ignores the different skills and work performed at each of the facilities. Although it is true that the staff at each facility provides basic ADL services to the residents, this is only the starting point for the work performed. Mr. Guilliams testified that employees working at the Nursing Center are working in a medical model that is heavily structured. The aides at the Nursing Center are trained to do medical interventions. In contrast, at the facilities treating the mentally retarded and providing assisted living the work is less structured. Aides at these facilities are trained to do rehabilitation or provide activities directed at socialization. Finally, the work environment of employees engaged in home health care is much less formal or structured and consists of merely picking up their schedules in the morning and then making the rounds of patients' homes.

The distances between the Nursing Center and the other facilities owned and operated by College Park are significant. No facility is adjacent to the Nursing Center and the closest is four miles away. Several facilities are six miles away. Consistent with what one might reasonably expect given the geographical distance between facilities, testimony from numerous employees establish there is very little interaction between employees at the Nursing Center and the other facilities. Employees report never having been to facilities other than the Nursing Center or having gone to other facilities only on tours.

There is no evidence of any past bargaining history between the Employer and any labor organization. As noted above, the record establishes that indicates that College Park has evolved over a period of time with new facilities being added since the Guilliams' established their first two homes in 1978.

Based upon the above, I conclude that the Employer has failed to overcome the presumption that a single facility unit geographically separated from other facilities operated by the same employer in the health care industry is an appropriate unit. It is clear that the Nursing Center is separate and apart from the Employer's other facilities in terms of geography, employee skills, employee duties and functions, employment conditions, and supervisory control. Accordingly, I find that the request by the Petitioner for a single unit facility consisting of the Nursing Center is an appropriate unit and I shall direct an election in that unit.

Petitioner has sought a bargaining unit at the Nursing Center that does not include one position, the Rehabilitation/Transportation Aide, which the Employer seeks to have included in the unit. Consideration must be given as to the "community of interest" shared by this position and others in the bargaining unit.

In determining whether the employees share a "community of interest" various factors are considered. **Overnite Transportation Company**, 322 NLRB 723, 724 (1996) (quoting NLRB v. Action Automotive, 469 U.S. 490 (1985)). The Board has held that in arriving at an appropriate unit determination it weighs various community of interest factors including:

"[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact, with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining."

Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

The duties of the rehabilitation/transportation aide include transporting residents to the hospital, to doctors and to other appointments and also performing rehabilitation aide work. The rehabilitation work is performed approximately 35 hours a week (out of a 40 hour work week)

and includes walking patients, doing range of motion work with them and other restorative work. He reports to the Director of Nursing at the Nursing Center and receives all of the same benefits as other hourly employees at the facility. At the present time there is only one rehabilitation/transportation aide employed at the Nursing Center.

The Petitioner, in its brief, does not dispute the inclusion of restorative aide position in the unit but claims that the present individual holding the position, Bill Gault, should be excluded from the unit because of the separate and specialized nature of his work with the residents.

The evidence fails to support the position of the Petitioner and I conclude that the rehabilitation/transportation aide is properly included in the bargaining unit. Indeed, testimony provided by Petitioner's own witness, employee Charlene Opphile, confirms that the rehabilitation/transportation aide does work similar to that of qualified nursing assistants (QNAs). She stated that the QNAs do physical therapy work in the form of range of motion work on patients but that Gault has more skill than the other QNAs. This certainly is not sufficient to exclude him from the bargaining unit. Neither are the arguments that the position reports directly to the Director of Nursing. Employee Opphile stated that she reports to a charge nurse who receives her orders from the Director of Nursing. The difference in supervision is insufficient to prevent the inclusion of the position in the bargaining unit. Accordingly, the Rehabilitation/Transportation Aide is included in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued

subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **SEIU, DISTRICT 1199, THE HEALTHCARE & SOCIAL SERVICES UNION, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).**

The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by July 6, 2000.

Dated at Cleveland, Ohio this 22nd day of June 2000.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

440-3300

440-1780-6000